

CHAPTER TWO - THE COMPONENTS OF DELAWARE'S CHILD WELFARE SYSTEM

A. DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH, & THEIR FAMILIES (DSCYF)

The Department of Services for Children, Youth and their Families ("DSCYF"), also known as the Children's Department, was created in 1980, and is enabled statutorily by 29 Del. C., Ch. 90. The Department is within the executive branch of government, and is primarily comprised of three divisions: The Division of Family Services, the Division of Youth Rehabilitative Services, and the Division of Child Mental Health Services.

Division of Family Services

The Division of Family Services ("DFS") is the lead agency charged with caring for Delaware's abused, neglected and dependent children. Currently, approximately 450 persons are employed by DFS, and as of April 30, 2007, were responsible for 5,921 children. Of those children, approximately 1,150 were in DFS legal custody. The remaining 4,774 children were receiving services from DFS while still in their home (intact families). The legal process, including the legal representation of children, involves the 1,150 children in DFS legal custody.

The DFS head office is located at 1825 Faulkland Road in Wilmington. Branches are spread throughout the state. The DFS Director is Carlyse

Giddins. New Castle County has sites at the New Castle County Police Station on Route 13 (hotline), the Elwyn Institute in Wilmington, and at University Plaza in Newark. Kent County has its offices in the Silver Lake Professional Plaza in Dover. Sussex County has locations in Georgetown, Milford, Seaford, and Frankford. Phone lists for each site are included in this manual at Tab 1.

Each county has several units that include but are not limited to investigation, treatment, permanency, long-term care, foster care, and adolescents.

Division of Child Mental Health Services

The Division of Child Mental Health Services ("CMH") provides voluntary mental health and substance abuse treatment services to children less than 18 years of age. These services are available to those without health insurance as well as to those children who have Medicaid but who need more than 30 units of outpatient counseling services per year. The Director of CMH is Susan Cycyk.

Approximately 20% of the children in DFS custody receive services from CMH. CMH manages these services by licensed mental health professionals who coordinate and contract with community providers. CMH also operates several residential treatment centers within the State. On April 30, 2007, CMH was serving 1,432 children.

Division of Youth Rehabilitative Services

The Division of Youth Rehabilitative Services (“YRS”) provides services to youth who have been adjudicated delinquent by the Family Court and ordered by the court system to receive rehabilitative services.

These services range from secure care to community services. YRS operates 5 secure care facilities in Delaware. The Director of YRS is Perry Phelps. On April 30, 2007, YRS was serving 2,884 youth, 12% of which were in the legal custody of DFS.

To learn more about the Children’s Department, please visit their website at <http://kids.delaware.gov>.

In New Castle County, Judges Chapman, Coonin, Crowell and Hitch are assigned to the Court’s at-risk unit and alternate weeks in which they handle DFS matters and criminal matters. Initial hearings (preliminary protective hearings) in New Castle are typically held every Wednesday.

In Kent and Sussex Counties, the Judges are responsible for all Family Court matters. Typically, each Judge reserves one day per week on his or her calendar to handle DFS matters.

To learn more about the Family Court and/or to access Court forms, please visit its website at <http://courts.delaware.gov/Courts/Family%20Court/>.

B. THE FAMILY COURT

The Delaware Family Court is now a constitutional court that has original exclusive jurisdiction over abused, neglected, and dependent children. 10 Del. C. § 921. The Court's criminal and civil jurisdiction is set forth in 10 Del. C. §§921 and 922. A Family Court phone listing is attached at Tab 2.

The Family Court assigns one judge to a case from the day a child enters foster care. That judge remains with the case until permanency is achieved, either by reunification with the family, termination of parental rights and adoption, or some other permanent plan. There are currently four judges in New Castle County, three judges in Kent County, and three judges in Sussex County that handle these cases.

C. THE DEPARTMENT OF JUSTICE

The Delaware Department of Justice (“DOJ”) has both criminal and civil divisions. The Deputy Attorneys General (“DAG”) in the civil division provides legal representation to most state agencies. The Department of Justice has recently created a Family Services Division which will house both civil and criminal matters that affect families. This will include the Deputies who represent DFS. Currently, there are nine deputies statewide who represent the Division of Family Services (4-New Castle, 2-Kent, 2-Sussex). In addition, there is one deputy assigned as General Counsel to DSCYF. However, one of the New Castle Deputies, Patricia Dailey Lewis, Esquire, has been chosen to lead the Family Services Division. As such, the leadership

and staffing structure may change during 2007-2008. Regardless, DFS is represented by a DAG in every court proceeding. Where CMH and/or YRS are also involved with a child in legal custody, the DAG is responsible for representing all three Divisions in Court. A current listing of DFS deputies and their phone numbers is attached at Tab 3.

D. COURT APPOINTED SPECIAL ADVOCATE PROGRAM (“CASA”)

The CASA program was created by statute in 1981. It is managed by the Family Court and is comprised of citizen volunteers who have agreed to represent the best interests of abused, neglected, and dependent children in child welfare proceedings. It is governed by 31 Del. C., Ch. 36. The CASA program has a statewide program director as well as nine CASA coordinators.

The coordinators provide oversight, guidance, and training to the citizen volunteers. In addition, for any court proceeding wherein the CASA must appear, the CASA is represented by a contracted attorney. Currently, there are four contracted attorneys statewide that represent the CASA program. The current coordinators and attorneys are included with this package under Tab 2.

Because CASA and OCA serve the same role in Family Court proceedings, it is rare that both will be in the same case. However, this circumstance most often exists when a teenager in foster care gives birth to a child whom he or she is unable

to care for. If one agency is representing the teenage parent, the other agency will represent the child since oftentimes what is best for the teenage parent is not what is best for the newborn.

E. OFFICE OF THE CHILD ADVOCATE

The Office of the Child Advocate (“OCA”) was created in 1999. In the wake of the numerous child abuse deaths in Delaware, the OCA was designed to safeguard the welfare of Delaware's children. In addition to policy reform, legislative advocacy, and training, OCA was charged with securing legal representation for children's best interests in child welfare proceedings. In that regard, the attorney serving as a GAL would have the same duties and responsibilities as the CASA program. However, the attorney would fill the role of CASA, CASA coordinator and CASA attorney. The program was designed to complement the CASA program since not enough citizen volunteers are available to represent the 1,160 children in Delaware's foster care system. A phone directory of OCA is included at Tab 4. The OCA statute is located at Tab 17.

F. THE PARENT'S ATTORNEY

Currently, there is no absolute constitutional mechanism in place to ensure that parents have legal representation from the day their children are removed from their custody. The United States Supreme Court has held that there is no absolute constitutional right to representation in termination of parental rights proceedings. *Lassiter v. Dept. of Social Svcs.*, 452 U.S. 18 (1981). The Delaware Supreme Court has followed that holding in *Matter of Carolyn S.S.*, Del. Supr., 498 A.2d 1095 (1984) and extended that holding to all dependency/neglect proceedings involving DFS in *Watson v. DFS*, No. 18, 2002 (Del. 2002). However, the Delaware Supreme Court has been clear that in applying *Lassiter*, most indigent parents will be entitled to counsel. Furthermore, the new Family Court Rules require the appointment of counsel for indigent parents in matters where DFS is a party. See Family Court Civil Rules 206 and 207. As a practical matter, all indigent parents involved in proceedings where DFS is a party receive court-appointed counsel. Currently, 8 attorneys are contracted statewide – 4 in New Castle, 2 in Kent and 2 in Sussex.

In February of 2006, the Delaware Supreme Court decided *Walker v. Walker*, Del. Supr., 892 A.2d 1053 (2006). In *Walker*, the Court determined that the balancing test for entitlement to representation by parents in termination of parental rights cases where the State was involved extended also to parents in private termination of parental rights proceedings. The case further inferred, through Footnote 5, that those rights by parents may further extend to private dependency/neglect proceedings. *Id.*